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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 304

UNITED STATES OF AMERICA, PETITIONER

v.

VICTOR CALAMARO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (R. 64–68) are reported at 236 F. 2d 182. The opinion of the District Court (R. 53–60) is reported at 137 F. Supp. 816.

JURISDICTION

The judgment of the Court of Appeals was entered on July 11, 1956 (R. 68). The petition for a writ of certiorari was filed on August 9, 1956, and was granted on October 15, 1956 (R. 69). The jurisdiction of the Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a numbers "pick-up man" is required to pay the special occupational tax imposed by the In-

ternal Revenue Code, 1939, Section 3290, on a person "who is engaged in receiving wagers for or on behalf of" any person liable for the wagering tax.

STATUTE INVOLVED

The pertinent provisions of chapter 27A (Wagering Taxes) of the Internal Revenue Code of 1939 (26 U. S. C., 1952 ed.) provide:

Subchapter A—Tax on Wagers

§ 3285. *Tax.*

(a) *Wagers.*

There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

(b) *Definitions.*

For the purposes of this chapter—

(1) The term "wager" means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term "lottery" includes the numbers-game, policy and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101; if no part of the

net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) *Amount of wager.*

In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(d) *Persons liable for tax.*

Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

* * * * * *

Subchapter B—Occupational Tax

§ 3290. *Tax.*

A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable.

§ 3291. *Registration.*

(a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) In accordance with regulations prescribed by the Secretary, the collector may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

* * * * *

§ 3294. *Penalties.*

(a) *Failure to pay tax.*

Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

* * * * *

STATEMENT

An information filed in the United States District Court for the Eastern District of Pennsylvania, on July 28, 1954, charged respondent with accepting wagers without having paid the special occupational

tax imposed by Section 3290 of the Internal Revenue Code[1] (R. 1, 3). After a trial by jury, respondent was found guilty (R. 51) and sentenced to pay a fine of $1,000 (R. 61).

At the trial, the following facts were proved:

Respondent was apprehended by officers of the Philadelphia police department on October 10, 1952 (R. 7). He had in his possession the following paraphernalia of a numbers lottery, as described by the officers: "40 yellow banker slips containing 1200 straight lottery bets and eight sheets of paper containing 600 number straight lottery bets, a total of 1800 number lottery bets" (R. 9, 21). Respondent admitted to the officers that he had been "picking up these numbers" for about three months at a salary of $40 per week (R. 13, 21).

One of the officers, experienced in the numbers type of lottery, testified that in that type of operation the money for a wager is paid by the player to a "writer", who records the wager in triplicate, retaining the white copy for his own record, furnishing the tissue copy to the numbers player, and delivering the yellow copy to the "pick-up man." The "pick-up man" delivers the yellow copy to the "banker." If the player has the winning number, the "banker" delivers the required amount to the writer, who in turn pays off the player (R. 15–16).

The evidence further showed that, on October 29, 1952, respondent had entered a plea of guilty in the Court of Quarter Sessions, County of Philadelphia, to

[1] Unless otherwise specified, references are to the Internal Revenue Code of 1939 (26 U. S. C. 1952 ed.).

setting up a lottery and had been fined $200 and costs (R. 24–29).

Respondent moved for acquittal, contending, *inter alia,* that a pick-up man is not a person "engaged in receiving wagers" for the banker (Section 3290, *supra,* p. 3) (R. 55). The trial judge rejected the contention, relying upon the decision of the Court of Appeals for the Fifth Circuit in *Sagonias* v. *United States,* 223 F. 2d 146 (R. 56), and stating (R. 55):

> * * * The numbers writers, of course, actually contacted the customers, took their money and assisted more directly in the making of the bets, but they were no more receiving wagers than was defendant, because they were all working not for themselves, but for their principal and it was the principal in fact who was making the wagers. Both the pick-up men and the numbers writers were assisting in the making and receiving of wagers and therefore all of them were "engaged in receiving wagers for or on behalf of" the numbers bank.

The Court of Appeals for the Third Circuit reversed (R. 68). The majority of the court (Hastie and Kalodner, J. J.) specifically recognized that its holding was in conflict with the Fifth Circuit's *Sagonias* decision, but reasoned that the "pick-up man" received no wager, but only a record of a wager (R. 64–67). Judge McLaughlin dissented from the majority's "attempted delicate distinction" as "ignor[ing] the realities of the case." He held, further, that respondent was not only "engaged in receiving wages," but was also "engaged in the business of accepting wagers" under the statute (R. 67–68).

SUMMARY OF ARGUMENT

A numbers "pick-up man," whose duty it is to collect wager slips from a "writer" and pass them on to a "banker", is liable for the wagering occupational tax as one "receiving wagers for and on behalf of" the "banker" within the meaning of Section 3290 of the Internal Revenue Code, *supra*, p. 3. This was the view of the Court of Appeals for the Fifth Circuit in *Sagonias* v. *United States*, 223 F. 2d 146. It has the support of the language, the legislative history, and the administrative interpretation of the statute.

A. The language of the statute speaks of "receiving wagers for or on behalf of any person," *i. e.*, the "banker." Section 3290, *supra*, p. 3. In everyday parlance, both the "writer" and the "pick-up man" fall within the literal meaning of these words for they both perform essential functions toward the "banker's" ultimate receipt of the wager. The court below, in finding that only the "writer" receives wagers, errs in that it treats the statute as though it spoke in terms of "placing" a wager on behalf of the bettor rather than "receiving" a wager on behalf of the "banker." Both the "writer" and the "pick-up man" receive bets on behalf of the "banker."

There is nothing extraordinary about a finding that two or more persons—here, the "writer" and the "pick-up man"—are receiving wagers for or on behalf of another. The word "receive" has other uses than as the equivalent of the technical word "accept" in the contractual sense. "Receive" may be used to

denote the taking of possession of, or the acquisition of a right to control, a thing, or to denote a person or place from which or for which the thing is being transferred, en route to its ultimate resting place. It is in this common sense that the statute speaks of "receiving" wagers. A man who performs the essential function of collecting betting slips, the only tangible evidence upon which a "banker" would pay a bet, is covered by its provision. Similarly, such a "pick-up man" receives "*wagers*" when he receives the numbers slips, the tangible record of the bet.

B. The legislative history of the statute confirms this reading. Congressional committee reports reveal that the occupational tax was conceived as a device for enforcing the ten per cent excise tax imposed on gamblers by Section 3285, *supra*, p. 2. They explain that the registration provisions of the tax (Section 3291, *supra*, p. 3–4) were included so that gambling transactions could be traced through complex business relationships requiring the identification of the various steps involved. It is evident, therefore, that Congress envisaged the liability of the "pick-up man" for registration, which is likewise couched in terms of "receiving wagers" on behalf of another; and it must follow that he is also liable for payment of the tax. Otherwise, the reporting requirements would be of no avail since the activity of the "pick-up man" as a step in the transaction is essential to its tracing.

Moreover, the committee reports expressly observe that "bookmakers' agents" or "runners" receive bets

for principals. Likewise, in the records of the debates on the floor of Congress there are references to the fact that the special tax is imposed on agents generally or on agents, subagents, and runners. These expressions leave little doubt that Congress intended that all agents channeling wagers to the policy operator, whether dubbed as messengers, pick-up men, runners, couriers, or otherwise, are receiving wagers for or on behalf of a principal within the meaning of the statute.

C. An administrative interpretation of the Treasury Department lends further support by specifying, through the use of an illustration of a typical numbers operation, that a pick-up man is liable for the special tax. This regulation should not be disregarded unless it has been shown to be plainly inconsistent with the law. Moreover, after this regulation had been in effect for nearly three years, Congress revised and amended the Internal Revenue Code re-enacting verbatim the provisions dealing with the wagering occupational tax which this regulation interprets. The regulation must therefore be deemed to have received congressional approval.

ARGUMENT

A "PICK-UP MAN" WHO RECEIVES WAGER SLIPS FROM A "WRITER" FOR DELIVERY TO A "BANKER" IS SUBJECT TO THE OCCUPATIONAL TAX ON GAMBLING AS ONE "RECEIVING WAGERS FOR OR ON BEHALF OF" THE BANKER

The provisions of the Internal Revenue Code which impose a wagering tax on professional gamblers are collected in Chapter 27 A of Title 26 of the United

States Code (1952 ed.).[2] Subchapter A is concerned with the 10% excise tax imposed on wagers. Its provisions define and limit the type of gambling transactions covered (subsections 3285 (b) and (d) *supra*, pp. 2–3) and fix the liability for the tax on each person who is "engaged in the business of accepting wagers" or "who conducts any wagering pool or lottery." We think (although the dissenting judge below thought otherwise)[3] that with respect to the numbers game this language imposes *the excise tax* only on the numbers "banker" doing business on his own account.[4] However, the $50 "occupational tax" here involved is applicable not only to the numbers "banker", as principal, but to "any person engaged in receiving wagers for or on [his] behalf." (Section 3290, *supra*, p. 3). The registration provisions require that each person subject to this tax disclose the identity of the person for whom he receives wagers or the persons who receive wagers for him (Section 3291,

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[2] Now Chapter 35 of the Internal Revenue Code of 1954. See 26 U. S. C. 4401–4423.

See also *Daley* v. *United States*, 231 F. 2d 123, 128 (C. A. 1).

[3] This is confirmed by the legislative history of the statute. See H. Rep. No. 586, 82d Cong. 1st Sess. p. 56, and S. Rep. No. 781, 82d Cong. 1st Sess., p. 114 (1951), wherein it is said: "* * * A person is considered to be in the business of accepting wagers if he is engaged as a principal who, in accepting wagers, does so on his own account."

See also Section 325.21 of Treasury Regulation 132 (26 C. F. R. 1956 Supp.), which reads in relevant part:

"A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted."

supra, pp. 3–4). It is the contention of the government that this special $50 tax, the constitutionality of which was upheld in *United States* v. *Kahriger*, 345 U. S. 22, and *Lewis* v. *United States*, 348 U. S. 419, is levied upon every person engaged in the occupation of gambling and that a salaried "pick-up man" in the numbers game, whose duty it is to collect bets from a "writer" and pass them on to a "banker", is one "receiving wagers for and on behalf of" the "banker" within the meaning of the statute. This was the view adopted by the Court of Appeals for the Fifth Circuit in *Sagonias* v. *United States*, 223 F. 2d 146. It has the support of the language, the legislative history, and the administrative interpretation of the statute.

A. THE LANGUAGE OF THE STATUTE

The statute imposes the occupational $50 tax upon one "engaged in receiving wagers for or on behalf of any person" who is liable for the special tax, *i. e.*, the "banker." See Section 3290, *supra*, p. 3. The court below, drawing a distinction between a wager and a record of wager, holds that, whereas a "writer" receives the wager, the "pick-up man" receives only the record of the wager and therefore does not come within the literal language of the statute. Such a refinement is, we think, unwarranted by the terms Congress used. As the District Court pointed out (*supra*, p. 6), the wager, the bet, is technically made neither with the "writer" nor the "pick-up man": it is with the principal. From the point of view of the principal, the "banker"—and that is the controlling point of view under this statute—both

the "writer" and the "pick-up man" are receiving the wagers in his behalf.

The error in the opinion below is that it interprets a statute which speaks of "receiving wagers" on behalf of a principal as if the Congress had spoken in terms of the placing of a wager on behalf of the bettor. From the bettor's viewpoint, the bet is *placed* once; the court below employed the same approach to hold that the wager is *received* once on behalf of the banker by the writer, and cannot be received again. True, in this situation, it is the "writer" who collects the funds from the bettor and writes the first record of the bet.[*] But the statute does not refer to receiving funds or wagers *from* the *bettors* but, as pointed out above, to receiving wagers *"for or on behalf of"* the *"banker."* The bet is received initially by the "writer" for the "banker," but it is also received for the "banker" by the "pick-up man" whose activity is equally essential with that of the "writer" in furtherance of the scheme of the lottery.

There is nothing strange in finding that two or more persons are "receiving" wagers for or on behalf of another. In common, everyday usage, the word "receive" is not limited to the equivalent of the technical word "accept" in a contractual sense. It may be used to denote custody, in the sense of a physical taking or a coming into possession as a

[*] It would appear that, with regard to some wagering, it is the practice of the "pick up man" to collect funds from the "writer" and to compile the wagering slips on a "master * * * sheet" before passing them on to the "banker." See *Reynolds* v. *United States*, 225 F. 2d 123, 129 (C. A. 5), certiorari denied, 350 U. S. 914. There is no evidence of this, however, in the present record.

result of delivery or transmission. It may be used in the constructive sense of an acquisition of the right to control or domination. It may be used to denote the place or person from which a thing is transferred en route to an ultimate resting place. For example, bank tellers, messengers, guards, clerks may all receive the same batch of currency on behalf of a bank—en route to the bank's vault—so that each can be said to be receiving the money on behalf of his employer (the bank). Agents or others receiving money or property on behalf of a principal can be guilty of the crime of "receiving stolen property." *Commonwealth* v. *Kronick*, 196 Mass. 286; *Daniels* v. *State*, 212 Miss. 223. In sum, "receiving" like "possession" is a word of many meanings which takes its specific content from its immediate context. *National Safe Deposit Co.* v. *Illinois*, 232 U. S. 58, 67–68.

In the light of the simple language and brevity of the special tax provision involved in the instant case (as well as the legislative history discussed below, *infra*, pp. 15–20), it seems evident that Congress was not concerned with the subtle refinements of legal "offer" and "acceptance" in this overall attempt at regulatory taxation of the many hundreds of gambling transactions operating in transitory fashion and varying ways. In the common, ordinary meaning of words, a "pick-up man" who takes the slips (or even a record thereof) and presumably the money to the principal has "received" the bets *for* the principal.

The decision of this Court in *Francis* v. *United States*, 188 U. S. 375, emphasizes the necessity for

the distinction which we think is determinative here, the distinction between a statute which considers wagers in terms of the person receiving the bet and one which is drawn in terms of the person placing the bet. In the *Francis* case, under a statute prohibiting the transportation in interstate commerce of a paper representing an interest in a lottery, the Court held that the term "represent" as there used meant "represent to the purchaser." 188 U. S. at p. 378. On this basis, the Court held that the carrying of duplicate slips across state lines (by the then equivalent of a "pick-up man") from the "writer" to the "banker" was not a violation of the statute since the slips were not "the purchasers' documents" and did not represent ("stand as the representative of title to") the purchasers' interests. In its discussion, however, the Court recognized both the "writer" and the carrier as "agents of the lottery company," noting that the movements were "internal circulation within the sphere of the lottery company's possession." 188 U. S. at p. 377. Under the statute here involved, as distinguished from that lottery act, the governing factor (as already noted) is not the interest of the purchaser, but the action taken "on behalf of" the principal. The recognition in the *Francis* case that both the "writer" and the "pick-up man" were acting on behalf of the principal thus supports the conclusion that the "pick-up man" is receiving wagers on behalf of the "banker" within the meaning of the present statute.

Furthermore, the "pick-up man" is plainly receiving a "*wager*" when he obtains the numbers slips or records thereof. In normal parlance, and in the

context we have been discussing, the word "wager" is not used in the sense of the contract alone—the intangible agreement—but connotes as well the written record of the bet (the numbers slip) which is made by the "writer" and conveyed to the "pick-up man."[6]

It is significant that the "pick-up man" is an essential part of the process by which the wager is ultimately received by the "banker." He is a man from headquarters, a trusted deputy of a numbers operator, whose performance is all the more vital to the wagering transaction because of the illegal nature of the business. He is in frequent and direct contact with the "banker." He has daily in his possession and under his control and domination the only tangible evidence upon which a wager can be paid. The "banker" therefore depends upon him for the very life of the business. His work, as well as the "writer's," constitutes an integrated step in conducting the lottery; all the participants work, not for themselves, but for the "banker" who is the principal of all of them in making the wagers; each step is essential in the "banker's" ultimate receipt of the bets.[7]

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[6] See the officers' references at R. 9, 21, to the slips as "containing" the "bets."

[7] In this connection, it is particularly important that in the registration provision of the statute, Section 3291, *supra*, pp. 3–4, Congress required reporting by the "banker" of the name and residence "of each person who is engaged in receiving wagers for him [the registrant] or on his behalf", and also if the registrant "is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person." The interrelationship between the tax provisions and the registration provisions is discussed *infra*, pp. 17–18.

B. THE LEGISLATIVE HISTORY

The court below has declined to attach significance to the purpose of the statute, finding the language so specific and limited as to admit of no "enlargement" by reference to congressional purpose or legislative history (R. 66, 67). However, even if the language appeared, in and of itself, to exclude coverage of a "pick-up man" (which we deny, *supra*, pp. 11–15), there would be little justification for a dogmatic adherence to the literal interpretation in the circumstances of this case. When the plain meaning of words used in a statute has led to an absurd or futile result, or even to merely an unreasonable one "plainly at variance with the policy of the legislation as a whole," this Court has looked beyond the words to the legislative purpose, following that purpose rather than the literal words. *United States, et al.* v. *American Trucking Association, Inc., et al.*, 310 U. S. 534, 543; *Armstrong Co.* v. *Nu-Enamel Corporation*, 305 U. S. 315, 332; *Helvering* v. *Morgan's Inc.*, 293 U. S. 121, 126; *Williams* v. *United States*, 289 U. S. 553; *Sorrells* v. *United States*, 287 U S. 435, 446; *Smiley* v. *Holm*, 285 U. S. 355; *United States* v. *Ryan*, 284 U. S. 167, 176; *Poporici* v. *Agler*, 280 U. S. 379; *Ozawa* v. *United States*, 260 U. S. 178, 194; *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 14.

Here, the interpretation of the court below gives rise to an unrealistic situation which is inconsistent with the objective of Congress. With respect to a single wagering transaction, it subjects to the $50 occupational tax a bookmaker and one of his agents who collects and channels funds and the record thereof to him. It exempts from the tax a second agent who

likewise channels the bet and its record to the bookmaker. It makes liability for the tax turn upon the wholly irrelevant factor of personal contact with a bettor. The result is a curious one—clearly at variance with the policy of the provisions, which, although passed as revenue raising measures, were in part motivated by a congressional desire to suppress wagering. *United States* v. *Kahriger*, 345 U. S. 22, 27.

The wagering tax provisions became law on November 1, 1951, as Section 471 (a) of the Revenue Act of 1951 (65 Stat. 531). With a view to covering 90 per cent or more of the multi-billion dollar business of professional gambling, Congress hoped to raise at least $400,000,000 in additional revenue annually. See 97 Cong. Rec. 6896; H. Rep. No. 586, 82d Cong. 1st Sess. pp. 54–55; S. Rep. No. 781, 82d Cong., 1st Sess., pp. 112–113 (1951).

The $50 occupational tax (Section 3290) was conceived as a device for effective enforcement of the ten per cent excise tax imposed on wagers by Section 3285. With respect to the registration requirements of the occupational tax (Section 3291),* the commit-

* 26 U. S. C. 3291 (*supra*, pp. 3–4) reads in part:

(a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—

* * * * *

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

tee reports state in substantially identical language (H. Rep. No. 586, 82d Cong., 1st Sess., p. 60; S. Rep. No. 781, 82d Cong., 1st Sess., p. 118 (1951):

> The committee conceives of the occupational tax as an integral part of any plan for the taxation of wagers and as essential to the collection and enforcement of such a tax. Enforcement of a tax on wagers frequently will necessitate the *tracing of transactions through complex business relationships, thus requiring the identification of the various steps involved.* For this reason, the bill provides that a person who pays the occupational tax must, as part of his registration, identify those persons who are engaged in receiving wagers for or on his behalf, and, in addition, identify the persons on whose behalf he is engaged in receiving wagers. [Emphasis added.]

The identity of the "pick-up man" is essential to the "tracing" of the gambling transaction through the various steps referred to by the committees. It is evident, therefore, that it was the Congressional understanding that the identity of the "pick-up man" would be disclosed under the provisions of Section 3291 requiring the principal to report the name and address of each person "engaged in receiving wagers for him or on his behalf," and that the "pick-up man", in turn, would be subject to the reporting requirements. To argue that the "pick-up man" does not "receive" wagers is to concede that he is outside the reporting requirements which thereby become substantially useless to enforcement. This is clearly at odds with the expressed purpose of the legislation as advanced by the committees.

There are further references in the legislative history which confirm the fact that it was the intention of Congress to subject to the occupational tax, as a means of enforcing the more important wagering tax, all agents of the lottery "banker" who channel the bets to the "bank". In discussing generally the wagering tax, the committee reports[9] observe, "Persons who receive bets for principals are sometimes known as 'bookmakers' agents' or as 'runners'."[10] On the floor of the House, Representative Reed of New York stated (97 Cong. Rec. 6896): "The bill [H. R. 4473] places a ten percent tax on bets, principally those made with bookmakers and lottery operators, and imposes a $50 a year occupational tax on such professional gamblers and their agents." Senator Kefauver said on the floor of the Senate (97 Cong. Rec. 12231–12232):

> The bill also provides for an occupational tax of $50 for each person who is engaged in wagering. That means that any person who is operating a lottery or any person who is engaged in the numbers business or who may be an agent operating for someone else, will have to pay an occupational tax of $50 in order to carry on his business. * * *
>
> * * * Under this proposal, bookmakers and the numbers operators, their *agents and run-*

[9] H. Rep. No. 586, *supra*, p. 56; S. Rep. No. 781, *supra*, p. 114.

[10] In this connection, it should be noted that the opinion of the court below states (R. 65): "The 'numbers banker,' even as bankers and brokers in reputable commerce, employs salaried *runners* and messengers. These couriers are called 'pick-up men'." [Emphasis added.]

> *ners* would register with the Internal Revenue Bureau and pay an occupational tax of $50 a year. As part of his registration, a professional gambler would have to identify those persons received wagers on his behalf and in addition disclose the identity of those persons for whom he may be acting as agent. * * * It [enforcement] may involve tracing hundreds of transactions through dummy corporations, *agents, subagents, and runners,* and penetrating the hundreds of artful devices to conceal the identity of those liable for payment. [Emphasis added.]

These statements leave little doubt that Congress intended that all agents engaging in wagering for the prime operator, whether dubbed as messengers, pick-up men, runners, couriers, or otherwise, should register and pay the occupational tax.

C. THE ADMINISTRATIVE INTERPRETATION

The decision of the Court of Appeals also fails to accord proper weight to the administrative interpretation of Section 3290. The controlling regulation is Treasury Regulation 132 (26 C. F. R. 1956 Supp.) which was issued on November 1, 1951 (16 F. R. 11211, 11218), the effective date of the statute (65 Stat. 531). Section 325.41 of the regulation, by the use of examples of typical wagering transactions, specifies the persons who are liable for the $50 occupational tax. One example reads as follows:

> B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive

wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.

B, his ten agents, *and the employee who collects the wagers received on his behalf* are each liable for the special tax. [Emphasis added.]

This Court has consistently held that such a regulation should not be disregarded or annulled unless plainly and palpably inconsistent with the law, and that the burden is upon the party claiming invalidity to show that the regulation is invalid. *Boske* v. *Comingore*, 177 U. S. 459, 470; *Brewster* v. *Gage*, 280 U. S. 327, 336; *United States* v. *Kirby Lumber Company*, 284 U. S. 1, 3; *Fawcus Machine Company* v. *United States*, 282 U. S. 375, 378; *Commissioner* v. *Wheeler*, 324 U. S. 542, 547.

Moreover, it is significant that in 1954, when this regulation had been in effect for nearly three years, Congress revised and amended the Internal Revenue Code, reenacting verbatim the provisions of Section 3290 as Section 4411 of the new Code (26 U. S. C.). The regulation therefore has the additional support of the doctrine that re-enactment of a statute without disapproval of regulations thereunder gives added sanction (*Commissioner* v. *Wheeler, supra,* at p. 547, fn. 10). It is an established principle that regulations and interpretations long continued without substantial change, applying to unamended or substantially re-enacted statutes, are deemed to have received congressional approval. *Corn Products Refining Co.* v. *Commissioner*, 350 U. S. 46, 53; *Helvering* v. *Winmill*, 305 U. S. 79, 83; cf. *Commissioner* v. *Flowers*, 326 U. S. 465, 469; *Helvering* v. *Griffiths*, 318 U. S.

371, 395; *Sagonias* v. *United States*, 223 F. 2d 146, 148 (C. A. 5).

As the Court of Appeals for the Fifth Circuit said in the *Sagonias* case, *supra* (223 F. 2d at 148):

> We think it significant that the Congress saw no necessity to change or clarify the wording of the statute in the light of its interpretation by the Treasury Department. Certainly, we cannot assume that the Congress was ignorant of that interpretation; on the contrary, we must presume that reenactment of the same wording was deliberate and with full knowledge of the published regulation. We are, therefore, of the opinion that appellant was within the class of persons intended to be taxed by Section 3290.

CONCLUSION

For the reasons stated, we respectfully submit that the judgment of the Court of Appeals should be reversed.

J. LEE RANKIN,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
JULIA P. COOPER,
Attorneys.

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